IN THE

Supreme Court of the United States

October Term, 1961

No. 45

EDWARD BROWDER, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WALTERS, MOORE & COSTANZO
Attorneys for Petitioner
Suite 1008 Ainsley Building
Miami 32, Florida

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE AND RULE INVOLVED	3
STATEMENT OF PROCEEDINGS	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	8
Appendix "A"—The Opinion of the Court of Appeals	App. 1
Appendix "B"—Counts 2 and 4 of Indictment	App. 11
Appendix "C"—Bill of Particulars	App. 13
Appendix "D"—Statement of Portion of the Trial not Stenographically Reported	App. 31
Appendix "E"—Statement of Proceedings not Appearing in the Record	App. 33

CITATIONS

STATUTES AND RULES	
18 U.S.C. 2315	3
Rule 7, F. R. Cr. P.	4

IN THE

Supreme Court of the United States

October Term, 1961

No. ——— ———

EDWARD BROWDER, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, by and through counsel, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, confirming the judgment of the United States District Court for the Southern District of Florida, Miami Division, convicting petitioner and providing a sentence of imprisonment.

OPINIONS BELOW

The opinion of the Court of Appeals, set forth in

Appendix A, infra App. 1, has not yet been reported. Petition for rehearing was denied without opinion. The District Court gave no opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on June 21, 1961; petition for re-hearing in that Court was denied without opinion on August 1, 1961. Order extending time to file this petition was entered on August 29, 1961, by the Honorable Hugo L. Black, Associate Justice of this Court, allowing petitioner until and including September 30, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

I.

WHETHER THE INDICTMENT IN CASE #11,520 - M - CRIMINAL AND COUNTS 2 AND 4 THEREOF CHARGE A CRIME OR STATE FACTS SUFFICIENT TO CONSTITUTE AN OFFENSE OR OFFENSES AGAINST THE UNITED STATES.

II.

WHETHER THE SAID INDICTMENT AND COUNTS 2 AND 4 THEREOF APPRISE THE DEFENDANT (APPELLANT) OF THE CHARGES AGAINST HIM WITH SUFFICIENT SPECIFICITY TO PERMIT HIM TO ADEQUATELY PREPARE HIS DEFENSE AND

PLEAD THE JUDGMENT IN BAR TO ANY LATER PROCEEDINGS AGAINST HIM BASED UPON THE SAME ALLEGED OFFENSE OR OFFENSES.

III.

WHETHER PETITIONER WAS ENTITLED TO A NEW TRIAL BY VIRTUE OF THE DISTRICT JUDGE HAVING FAILED TO INQUIRE INTO A CONVERSATION HAD DURING A TRIAL RECESS AMONG A GOVERNMENT WITNESS, A JUROR AND TWO MEMBERS OF THE JURY PANEL WHO HAD BEEN PEREMPTORILY EXCUSED BY DEFENSE COUNSEL.

STATUTES AND RULES INVOLVED

18 U.S.C. 2315 provides in pertinent part as follows:

"Whoever receives, conceals * * * securities * * * of the value of $5,000 or more * * * moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, * * *

* * *

Shall be fined not more than $10,000 or imprisoned more than ten years, or both.

* * * "

Rule 7, FRCrP reads in pertinent part as follows:

> "(a) * * *An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information."

STATEMENT OF PROCEEDINGS

With respect to the petitioner's contention that counts 2 and 4 of the indictment (Appendix B) do not protect the petitioner by informing him of just what he is accused of receiving (Questions 1 and 2 above) we should like to direct the Court's attention to the statement by the Court of Appeals, "We think that the indictment standing alone charged receiving or concealing all the bonds stolen on the days mentioned from the designated financial institutions. This was subsequently limited by a bill of particulars naming a lesser number of bonds." (App. 13, infra) This in effect says that if the government had not filed a bill of particulars then the defendant could not be indicted again for receiving any bonds stolen on the date mentioned from the institutions in question, but since the government was required to and has filed a bill of particulars the prosecution is limited to the bonds described in the bill of particulars, and for receiving bonds stolen from the named institutions but not described on the bill of particulars the defendant can now be indicted, and there will be no question of double jeopardy. And all this in complete disregard of the intentions of the Grand Jury at the time of presentment.

To round out the picture it is necessary to consider

what the government prosecutor said in open court regarding this subject the day before the bill of particulars (Appendix C) was given, which also was the day before the trial; he said that the bonds referred to in the indictment in this case were the same bonds listed on the bill of particulars furnished to the defendant in connection with a previous indictment in Case No. 11-064-M-Cr. (Appendix E) The bill of particulars in the latter case was the same indeed, but it was not limited by asterisks to certain bonds on the list; it included the entire list. So, how do we know whether the grand jury limited the prosecution to certain bonds or whether the government prosecutor made the limitation as a last minute decision so as to save some of the bonds for a later prosecution in the event he were to lose the case. If we are to reconcile his statement with his actions we must conclude that it was the decision of the prosecutor; and if this be true, then the defendant was not accused by grand jury indictment but, in effect, by the prosecutor.

To complete the picture on this it is necessary to study the wording of the indictment. What does the phrase "and other Canadian bonds" mean toward the end of count 2, and the phrase "and other Canadian securities" near the end of count 4. We must assume that the words mean something. Do they mean to include bonds stolen from the named institutions on the dates mentioned and only those bonds, or do they mean to include other bonds found in the possession of the defendant at the same time the named bonds were found; could the phrase perhaps be considered broad enough to include in count 2 the bonds specifically mentioned in count 4? Why not? The phrase is set off from the description of the named bonds by a semicolon in count 2 and were it not for an obvious typo-

graphical error the phrase in count 4 would have likewise been set off by a semicolon.

The net result is that it is impossible to tell from the indictment itself just what the defendant is charged with receiving; and it is fundamental that the indictment must do just that.

The indictment is further deficient in that it charges that the bonds in question "constitute interstate commerce". This means nothing. It might have been sufficient to state that the bonds at the time in question "constituted interstate commerce" thus to bring it within the meaning of the statute. Where a grammatical mistake renders a charge meaningless it vitiates an indictment.

With respect to question 3, above, relative to the conversation had during a recess of the trial which was participated in by a government witness, a juror and two members of the jury panel peremptorily excused by defense counsel, the petitioner can but say that the matter was immediately brought to the attention of the Court by counsel for the defendant-petitioner (Appendix D). The government does not deny that the matter was called to the attention of the Court when it happened; it does, however, differ as to what was said at the time. The fact remains, however, that the incident did occur and the Court did not make any inquiry into the matter. The substance of the conversation in question as overheard by the defendant, his wife and his counsel was a statement by government witness Cox as follows: "Oh, is he on the jury; well, I'll have to talk to him; he sold me a car not so long ago." Since juror Sands was employed by a local automobile dealer, counsel concluded that the govern-

ment witness was speaking of Mr. Sands. The high degree of irregularity of this conversation and its presumptively prejudicial effect is emphasized by the fact that in the voir dire questioning of the prospective jurors they each declared under oath that they did not know any of the government or defense witnesses.

Hearing was had on the government's motion to strike and objections to notice of filing statement of portion of the trial not stenographically reported, but no order was entered thereon by the District Judge. The statement assailed recounted the incident of the aforesaid prejudicial conversation as reported to the Court by counsel for the defendant. (Appendix D)

REASONS FOR GRANTING THE WRIT

The petitioner's constitutional right to a trial by an impartial jury presumptively was infringed.

Counts 2 and 4 of the indictment are so worded that it is impossible to tell from the face thereof what bonds the petitioner is accused of receiving, as is attested by the equivocal statements made by the prosecutor in open court; one cannot tell what evidence the Grand Jury had before it nor what it meart to charge.

CONCLUSION

In view of the importance of the right to a trial by a fair and impartial jury in our system of jurisprudence and the right of the defendant to be advised of what he is accused by a Grand Jury indictment in cases such as this, it is respectfully submitted that the petition for writ of certiorari should be granted.

WALTERS, MOORE & COSTANZO
Attorneys for petitioner

By_____
Of Counsel

APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18362

EDWARD BROWDER, JR.,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(June 21, 1961.)

Before TUTTLE, Chief Judge, and CAMERON and JONES, Circuit Judges.

TUTTLE, Chief Judge: This appeal attacks the conviction of appellant on two counts of a six-count indictment for having in interstate commerce knowingly and willfully received and concealed stolen securities knowing them to have been stolen and which were actually stolen from two banks in Ontario and Quebec Provinces in Can-

ada. These acts were charged to be in violation of the provisions of Title 18, United States Code, Section 2315.[1]

The attacks of the appellant are of three kinds: (1) on the indictments; (2) on the sufficiency of the evidence; and (3) on the conduct of the trial.

The contentions as to the indictments are to the effect that they were not specific enough to put appellant on notice as to which securities he was being prosecuted on

---

1 This section is as follows:

"§2315. Sale or Receipt of Stolen goods, Securities, or monies.

Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken; or

Whoever receives, conceals, stores, barters, sells, or disposes of any falsely made, forged, altered, or counterfeited securities, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barters, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely making, forging, altering, or counterfeiting any security, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security, or any part thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government or by a bank or corporation of any foreign country." 18 U.S.C., §2315.

and that they were not specific enough to protect him against the danger of subsequent prosecution as to the same offenses.

The indictment originally charged six offenses; counts one and three charged Browder with transporting stolen securities in interstate commerce, count one describing certain securities as "securities stolen at the Brockville Savings and Trust Company, etc." and count three describing certain securities as "securities stolen at the Caisse National D'Economie Insurance Company, etc."; counts two and four charged Browder with knowingly and willfully receiving and concealing the same stolen securities;[2] counts five and six charged Browder with "disposing" of

2 Since these are the two counts on which appellant was convicted the language of counts two and four are here reproduced in full:

"COUNT TWO

The Grand Jury further charges:

That on or about March 2, 1959, at Miami, in the Southern District of Florida,

EDWARD J. BROWDER, JR.,
alias John Smyth,

did knowingly and wilfully receive and conceal stolen securities of a value in excess of $5,000.00, to-wit: Securities stolen at the Brockville Savings and Trust Company, Brockville, Ontario Province, Canada, on May 3rd or May 4th, 1958, Dominion of Canada bonds bearing 3% interest; City of Windsor general debenture bonds bearing 3½% interest; bonds of the Dominion of Canada, Province of Manitoba, bearing 5½% interest; and other Canadian bonds, which constitute interstate commerce, knowing the same to have been stolen; in violation of Title 18, United States Code, Section 2315.

. . . .

COUNT FOUR

The Grand Jury further charges:

That on or about March 2, 1959, at Miami, in the Southern District of Florida,

EDWARD J. BROWDER, JR.,
alias John Smyth,

did knowingly and wilfully receive and conceal stolen securities of a value in excess of $5,000.00, to-wit: Securities stolen at the Caisse National D'Economie Insurance Company, Montreal, Quebec Province, Canada, being bonds of the City of Longueuil, Province

the two groups of stolen bonds, knowing them to have been stolen.

There was an additional indictment charging appellant, together with Francisco Ferrara, with having conspired to do the acts charged against them in the six counts above outlined. The two indictments were consolidated for trial.

The trial court, at the conclusion of the government's case, granted a motion for judgment of acquittal in the conspiracy case, and, at the close of the trial, entered a judgment of acquittal as to counts five and six. The jury found the appellant guilty of the two receiving and concealing counts and found him not guilty of the two transportation counts.

The requirements of an indictment to withstand a motion to dismiss are well established. As set out in the Federal Rules of Criminal Procedure: "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." F.R.Cr.P. §7(c). Except as to the element of interstate commerce, discussed below, we have no doubt that this indictment was sufficient in the circumstances of this case to inform the appellant of the fact that he was being charged with receiving and concealing stolen

---

of Quebec, Canada, bearing 5½% interest; bonds of LaVille de Pont-Visu, Province of Quebec, Canada, bearing 4½% interest; bonds of LaVille de Ste-Therese, Province of Quebec, Canada, bearing 4% interest; bonds of LaVille de Ste-Rose, Province of Quebec, Canada, bearing 4½% interest, and other Canadian securities, which constitute interstate commerce, knowing the same to have been stolen: in violation of Title 18, United States Code, Section 2315."

securities knowing them to be stolen and of a value in excess of $5,000, and that they were securities stolen from a certain named bank. We think that the indictment standing alone charged receiving or concealing all of the bonds stolen on the days mentioned from the designated financial institutions. This was subsequently limited by a bill of particulars naming a lesser number of bonds. When, in response to the motion for a bill of particulars, the United States furnished a list of the specific numbered bonds which it said were "the securities referred to in Count . . . 2 . . . 4 of the indictment," any contention that there was insufficient information to prevent the danger of double jeopardy was removed from the case. See *Bartell v. United States*, 227 U.S. 427, and *Dunbar v. United States*, 156 U.S. 185, 191.

Appellant's criticism of the manner and time of furnishing the bill of particulars is not available to him here. In view of the fact that all of the bonds involved had been taken from appellant upon his arrest, the only conceivable need for the better description was to protect him against a subsequent prosecution on the same securities as to which he was here proceeded against. Since he was furnished the list, squarely pinpointing the securities made the basis of this prosecution, we think it immaterial that this list was not furnished earlier in the course of the proceedings.

The further attack on the indictment touches on the expression, "which constitute interstate commerce." Appellant comments only that, "The indictment by the use of

the present tense renders the charge meaningless; it is only proper to charge that the bonds *constituted* interstate commerce at the time they were allegedly received. It is not so charged; the indictment in this respect is defective." It will be noted that the appellant does not attack the indictment on the ground that the alleged act of the accused in receiving or concealing the bonds under the circumstances did not, or could not, "constitute" interstate commerce, a point which the government says is answered by the three cases of *United States v. Segelman*, W.D.Pa., 86 F. Supp. 114, *United States v. Rocco*, W.D.Pa., 99 F. Supp. 746, and *DeFreese v. United States*, 5 Cir., 270 F. 2d 737. It is only argued that the indictment did not adequately state that the acts did in fact constitute interstate commerce. We think this is clearly without merit.

The next attack by appellant is on the sufficiency of the evidence. We conclude this is equally without substance. It was testified that the bonds had been stolen from the financial institutions in Canada; that some of them had been offered to a potential purchaser by Ferrara in Boston; that Browder met Ferrara in Miami and he later made a trip to Europe and tried unsuccessfully to sell the bonds in Switzerland; that he returned to Miami and tried to sell the bonds to two individuals, whom he met rather casually, at a discount of as much as 21 percent at a time when the bonds (bearer bonds) were selling at 97½; that he told different stories as to the source of the bonds, but declined to let it be known that he was the owner; that he finally submitted a sample bond to a potential purchaser or go-between for a presumed

purchaser and this was turned over to the FBI, who kept the appointment for closing the sale of $138,000 face value of the bonds; that after the arrest and after being warned that he need say nothing, the FBI agent testified that Browder made a suggestion to the agent that if they would return these bonds, drop the arrest and avoid any publicity, he had a good chance of "recovering $1,750,000 more worth of these bonds";[3] finally, that one of the persons Browder approached for the purpose of acting as a go-between testified that Browder had told him the bonds were stolen, but that he had nothing to do with the theft.

To counter this evidence Browder testified that he had been given the bonds by a group of Cubans in return for the shipment of certain arms from Italy, and he attempted to explain his willingness to sacrifice them

---

[3] As testified to by Agent Lenihan, this was the suggestion:

"A. Well, on the way up to our F.B.I. office at 39th Street and Biscayne Boulevard, Mr. Browder and I were sitting in the back seat of one of the Government cars, and Mr. Browder told me that he was afraid that he was going to get a lot of publicity in connection with this arrest and wanted to know if it would be possible for him to work out some sort of arrangement with us; and in return for not being arrested and not getting any publicity, he would agree to cooperate with the Government.

He said that he could have an 80 to 85 per cent chance of recovering $1,750,000 more worth of these bonds. He said that in order to do that, he would have to be given this group of bonds back, not be arrested and not have any publicity regarding the matter.

And, if he couldn't get the bonds back, he would have to have either the pesos or the dollar value for the bonds, and he would negotiate with his forces, and he would be able to get us about $700,000 or $800,000 worth of these same Canadian bonds, the same type Canadian bonds, within 24 or 48 hours. And then, within a week, he said, he would be able to produce about a million dollars more worth of these bonds."

at 79 cents on the dollar because of some deal with Cuban pesos. He was unable to explain, however, why he could not simply sell the bearer bonds at 97½ and then invest the much larger proceeds in Cuban pesos. At any event the jury seems not to have believed his story. Perhaps some of this disbelief stemmed from the fact that it was fairly convincingly proved that one of the men he testified as having made the negotiations with him on December 23, 1958, had been killed in an aircraft accident in Cuba on November 5, 1958.

The only substantial question presented by appellant here is whether there was sufficient evidence from which the jury could believe that either the receipt or concealment of the bonds was in interstate commerce. We think the evidence fully warrants a finding by the jury that the bonds were received by Browder from Ferrara for the purpose of selling them; that Browder had them with him in Europe in an effort to sell them; that he subsequently brought them back or sent them back to Miami for the purpose of selling them there.[4] Browder's possession of the bonds under the circumstances is admitted in appellant's brief to warrant the inference that he concealed them. "[I]t is apparent from his mere possession of the bonds that Browder received them and that in the course of

---

[4] There was evidence that he wrote from Europe to one Lemberg in Miami and later telephoned him from New York about "something which should be very interesting for your Cuban banker friend and will look forward to discussing it on my arrival there," and that on arrival in Miami he told Lemberg that he wanted to put up some collateral for a loan; thereafter Lemberg introduced him to Bekowitz and Browder tried to sell the bonds to the latter.

his possession he concealed them . . ." Thus it could be found that he concealed them at the very time that he was attempting to dispose of them as a part of interstate or foreign commerce.

We then come to the contentions about the conduct of the trial. We conclude there was no error in the refusal of the trial court to sever the two cases for trial or in the refusal to grant a continuance. Nor is there any merit in appellant's contention that the court should have required the government to elect between counts 1 and 3 on the one hand, and 2 and 4 on the other.

Following the trial appellant submitted, purportedly "pursuant to Rule 75(n) Federal Rules of Civil Procedure, as made applicable by Rule 39(b)(1) of the Federal Rules of Criminal Procedure, a statement by counsel for appellant touching on an occurrence "during the course of this action and not stenographically reported." This statement reported an alleged conversation between a government witness and a juror.[5] The government moved to strike the proposed statement, disagreeing with the

[5] The statement made by counsel follows:
"MR. BOOTH (Defense counsel Richard R. Booth, addressing U. S. District Judge Emett C. Choate): Your Honor, my client, his wife and I have just overheard a portion of a conversation which I believe should be brought to the attention of the Court. As the three of us were approaching this courtroom we observed several persons conversing amiably in the east hall on this floor near the Clerk's Office. Those participating in this conversation were Government witness Cox, juror Vincent W. Africano, Jack Ancher and John Ashe, both of whom were peremptorily excused from service on the jury in this case by myself. We overheard the Government witness, Mr. Cox, say to Mr. Africano, the juror: 'Oh, is he on the jury? Well, I'll have to talk to him. He sold me a car not so long ago.' I call to the Court's attention that William M. Sands, a member of the jury, is with a Miami automobile dealer, Luby Chevrolet, which leads me to conclude that the Government witness

statement "materially." Since it appears that the motior for supplementing the record was never called up and the statement of counsel was not "settled and approved," as required by the Rule, there is nothing here for our consideration. The stenographic record can be amended in a manner specifically set out in the rules. This includes a statement by the moving party and a settlement by the court of any dispute touching on the matter. The burden is on the party seeking to enlarge the transcript, and a failure to comply with the rule leaves the matter outside the record.

The judgment is AFFIRMED.

---

was talking about Mr. Sands. Since all the members of the jury said under oath that they did not know any of the Government witnesses when a list was read to them and since any contact between members of the jury and persons other than counsel is highly irregular and has been forbidden by this Court, the nondisclosure and the conversation in the hall may have well been prejudicial to my client, and I think an inquiry should be made to determine whether that is the case, because if Mr. Sands sold Mr. Cox a car, or if the conversation was prejudicial I will want to ask for a mistrial.

MR. BRIGGS (Assistant U. S. Attorney John L. Briggs prosecuting the case): I think the procedure to be used in situations like this is to proceed with the trial and then have an inquiry after the verdict has been returned.

JUDGE CHOATE (Presiding Judge Emett C. Choate): Yes, that is true; so let us proceed with the trial. If after the verdict is returned you feel that an inquiry should be made, recall the incident to the Court and we shall look into the matter."

APPENDIX "B"

(INDICTMENT)

[TITLE OMITTED]

COUNT TWO

The Grand Jury further charges:

That on or about March 2, 1959, at Miami, in the Southern District of Florida,

EDWARD J. BROWDER, JR.,
alias John Smyth,

did knowingly and wilfully receive and conceal stolen securities of a value in excess of $5000.00, to-wit: securities stolen at the Brockville Savings and Trust Company, Brockville, Ontario Province, Canada, on May 3rd or May 4, 1958, Dominion of Canada bonds bearing 3% interest; City of Windsor general debenture bonds bearing 3½ percent interest; bonds of the Dominion of Canada, Province of Manitoba, bearing 5½% interest; and other Canadian bonds, which constitute interstate commerce, knowing the same to have been stolen; in violation of Title 18, United States Code, Section 2315.

* * *

COUNT FOUR

The Grand Jury further charges:

That on or about March 2, 1959, at Miami, in the Southern District of Florida,

EDWARD J. BROWDER, JR.,
alias John Smyth,

did knowingly and wilfully receive and conceal stolen securities of a value in excess of $5000.00 to-wit: securities stolen at the Caisse National D'Economie Insurance Company, Montreal, Quebec Province, Canada, being bonds of the City of Longueuil, Province of Quebec, Canada, bearing 5½% interest; bonds of LaVille de Pont-Viau, Province of Quebec, Canada, bearing 4½% interest; bonds of LaVille de Ste-Therese, Province of Quebec, Canada, bearing 4% interest; bonds of LaVille de Ste-Rose, Province of Quebec, Canada, bearing 4½% interest, and other Canadian securities, which constitute interstate commerce, knowing the same to have been stolen; in violation of Title 18, United States Code, Section 2315.

A True Bill.

_____

Foreman

_____

Assistant U. S. Attorney

APPENDIX "C"

[TITLE OMITTED]

BILL OF PARTICULARS

COMES NOW the United States of America, by and through its undersigned Attorney, and in compliance with the Order of this Court, entered on April 4, 1960, files herewith its Bill of Particulars concerning the Indictments in this cause and in this connection says:

1. The securities referred to in Count 1, Count 2, and Count 5 of the Indictment, No. 11,520, are more particularly identified in the attached list and marked by a single asterisk following the serial number.

2. The securities referred to in Count 3, Count 4, and Count 6 of the Indictment, No. 11,520, are more particularly identified in the enclosed list and marked by a double asterisk following the serial number.

3. The securities marked in the attached list with single and double asterisks are collectively and exclusively the same securities referred to in the single count of No. 11,613.

4. All of those securities on the attached list not marked by single or double asterisks are the securities which were seized from the defendant, Edward J. Browder, Jr., at the time of his arrest on March 2, 1959, at Mi-

ami, Florida, but are not included as securities contemplated by either Indictment No. 11,520 or Indictment No. 11,613.

E. COLEMAN MADSEN
UNITED STATES ATTORNEY

By: JOHN L. BRIGGS
John L. Briggs
Assistant U. S. Attorney

I hereby certify that a true copy of the foregoing Bill of Particulars was this 5th day of April, 1960, handed to Walters, Moore & Costanzo, Attorneys for Defendant, Edward J. Browder, Jr., 1008 Ainsley Building, Miami, Florida.

					OLDEST COUPON ON BOND	SERIAL NUMBER

		City of Windsor General Debenture				
$1,000	3½%	"	12/31/67	9/18/45	12/31/58	Series [illegible] No. [illegible]
$1,000	3½%	"	12/31/67	9/18/45	12/31/58	Series [illegible] No. [illegible]
$1,000	2 3/4%	"	12/31/64	9/18/45	12/31/58	Series [illegible] No. [illegible]
$1,000	2 3/4%	"	12/31/64	9/18/45	12/31/58	Series [illegible] No. [illegible]
$1,000	2 3/4%	"	12/31/65	9/18/45	12/31/58	Series [illegible] No. [illegible]
$1,000	2 3/4%	"	12/31/64	9/18/45	12/31/58	Series [illegible] No. [illegible]
[illegible]						
$1,000	5½%	[illegible]	4/1/70	Unknown	4/1/58	No. [illegible] **
$1,000	4½%	Canada Province of Quebec, La Ville de Font-Viau	4/1/60	Unknown	4/1/58	No. [illegible] **
$1,000	4½%	"	4/1/62	Unknown	4/1/58	No. [illegible] **
$1,000	4½%	"	4/1/62	Unknown	4/1/58	No. [illegible] **
$1,000	4½%	Canada Province of Quebec La Ville de Ste. Therese	9/1/69	Unknown	3/1/58	No. [illegible] **

$1,0	[illegible]%		[illegible]/1/6	[illegible]	3	**
$1,00	[illegible]%		[illegible]/1/6	Unknown	3,	**
$500	[illegible]%	Canada Province of Quebec - La Ville de Ste - Rose	10/1, 7	Unknown	4,	**
$50[illegible]	[illegible]%	"	10[illegible]7	[illegible]	[illegible]	**
$1,00[illegible]	[illegible]%	The T. Eaton Realty Co.	12/15/76	Unknown	[illegible]	*
$1,000	5[illegible]%	"	12/15/76	Unknown	[illegible]/58	[illegible]
$1,000	5[illegible]%	"	12/15/76	Unknown	5/1/58	[illegible]
$1,000	5%	St. Lawrence Corp. Limited	4/15/72	Unknown	[illegible]/58	MAO[illegible] *
$1,00	3 3/4%	The Hydro Electric Power Commission of Ontario	1/15/66	Unknown	[illegible]/58	HC-KO[illegible]
$1,000	5½%	Dominion of Canada Province of Manitoba	7/1/58	Unknown	7/1/58	RO[illegible] *
$1,000	4%	Province of	12/15/61	Unknown	12/15/58	BW-RO5919

Manitoba

DENOM INA TION	INTEREST	ISSUING AGENCY	MATURITY DATE	ISSUE DATE	ORIGINAL COUPON ON BOND	SERIAL NUMBER
		Dominion of Canada	9 1 [illegible]	11/1/45	9/1/58	F 7 B0[illegible]
$[illegible]	[illegible]%	"	9 1 [illegible]	11/1/45	9/1/58	F 7 B[illegible]
[illegible]	[illegible]%	"	[illegible]	11/1/45	9/1/58	F 7 B[illegible]
[illegible]	[illegible]%	"	[illegible]	5/1/45	4/1/58	F 5 B00[illegible]
[illegible]	[illegible]%	"	[illegible]	5/1/45	4/1/58	F 5 B00[illegible]
$[illegible]	[illegible]%	"	10/1/63	5/1/45	4/1/58	F 5 B00[illegible]
$[illegible]	[illegible]%	"	10/1/63	5/1/45	10/1/57	F 5 B00[illegible]
$[illegible]	[illegible]%	"	2/1/62	11/1/44	8/1/58	F 3 B01[illegible]
$500	3%	"	2/1/62	11/1/44	8/1/58	F 3 B01[illegible]
$500	3%	"	2/1/62	11/1/44	8/1/58	F 3 B01[illegible]
$500	3%	"	2/1/62	11/1/44	8/1/58	F 3 B01[illegible]
$500	3%	"	6/1/60	5/1/44	6/1/57	L 9 B00[illegible]
$500	3%	"	1/1/59	11/1/43	7/1/58	L 7 B01[illegible]
$500	3%	"	1/1/59	11/1/43	7/1/58	L 7 B01[illegible]
$500	3%	"	1/1/59	11/1/43	7/1/58	L 7 B01[illegible]
$500	3%	"	1/1/59	11/1/43	7/1/58	L 7 B01[illegible]
$500	3%	"	1/1/59	11/1/43	7/1/57	L 7 B01[illegible]
$100	3%	"	1/1/59	11/1/43	1/1/58	L 7 A07[illegible]
$100	3%	"	1/1/59	11/1/43	7/1/58	L 7 A82[illegible]
$100	3%	"	1/1/59	11/1/43	7/1/58	L 7 A82[illegible]
$100	3%	"	1/1/59	11/1/43	1/1/58	L 7 A1038703
$100	3%	"	1/1/59	11/1/43	11/1/58	L 7 A1038704
$100	3%	"	6/1/60	5/1/44	6/1/58	L 9 A611347
$100	3%	"	6/1/60	5/1/44	12/1/58	L 9 A613964
$100	3%	"	6/1/60	5/1/44	12/1/57	L 9 A1074955
$100	3%	"	2/1/62	11/1/44	8/1/58	P 3 A302601
$100	3%	"	2/1/62	11/1/44	8/1/58	P 3 A969239
$100	3%	"	2/1/62	11/1/44	8/1/57	P 3 A969251
$100	3%	"	2/1/62	11/1/44	2/1/57	P 3 A969252
$100	3%	"	2/1/62	11/1/44	8/1/58	P 3 A510811
$100	3%	"	2/1/62	11/1/44	8/1/58	P 3 A524[illegible]
$100	3%	"	2/1/62	11/1/44	8/1/58	P 3 A524[illegible]
$100	3%	"	2/1/62	11/1/44	2/1/58	P 3 A11[illegible]
$100	3%	"	2/1/62	11/1/44	8/1/57	P 3 A11[illegible]

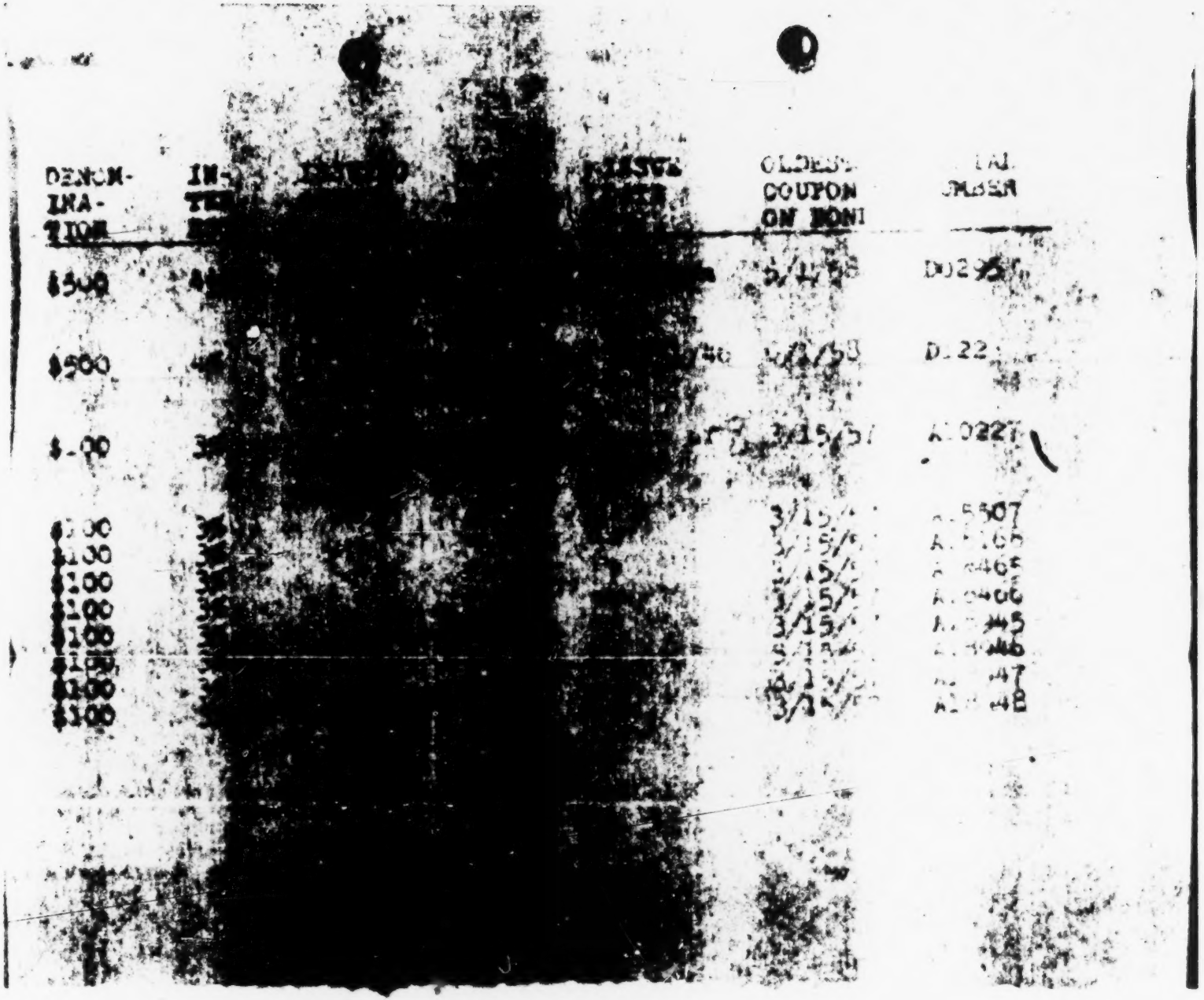
DENOMINATION	INTEREST	ISSUING AGENCY	MATURITY DATE	ISSUE DATE	AMOUNT OUTSTANDING	REGISTRATION NUMBER
$100	4%	Dominion of Canada	2/1/62	11/ 44	2,	A
$100	3%	"	10/1/63	5/1 45	4,	A 2
$100	3%	"	10/1/63	5/1/45	10,	P. A 8
$100	3%	"	10/1/63	5/1/45	10,	P. A 5
$100	3%	"	10/1/63	5/1/45	10 ,	P. A
$100	3%	"	10/1/63	5/1/45	10 ,	P. A
$100	3%	"	10/1/63	5/1 45	10 ,	P. A 8
$100	3%	"	10/1/63	5/1/45	4,	A 8
$100	3%	"	10/1/63	5/1/45	4,	P. A
$100	3%	"	10/1/63	5/1/45	4,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	3,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	3,	P. A
$100	3%	"	9/1/66	11/1/45	3,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	9,	P. A
$100	3%	"	9/1/66	11/1/45	3

[redacted] 87-8756
JPL:cms

DENOMINATION	INTEREST RATE	REGISTERED ASSIGNEE	[redacted]	ISSUE DATE	OLDEST COUPON ON BOND	SERIAL NUMBER
$100	3½	Dominion of Canada	9/1/56	11/1/45	9/1/58	P.7 A1118597
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A189775
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/59	P.7 A1206435
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A1835525
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/58	P.7 A2064708
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A2064714
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A2064729
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A3180420
[redacted]	[redacted]	[redacted]	[redacted]	11/1/45	9/1/57	P.7 A3180421
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	7/1/57	L.7 K1484138
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	1/1/58	L.7 K2106757
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	1/1/58	L.7 K2106788
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	7/1/58	L.7 K2810791
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	7/1/58	L.7 K2106775
[redacted]	[redacted]	[redacted]	[redacted]	11/1/43	1/1/58	L.7 K1010031
[redacted]	[redacted]	[redacted]	[redacted]	5/1/44	6/1/58	L.9 K2397813
[redacted]	[redacted]	[redacted]	[redacted]	5/1/44	6/1/58	L.9 K1006158

BM 87-8750
JPL:cma

DENOMINATION	INTEREST	ISSUING AGENCY	MATURITY DATE	ISSUE DATE	OLDEST COUPON ON BOND	SERIAL NUMBER
$50	4%	Dominion of Canada	6/1/60	5/1/44	12/1/57	L.9H04[illegible]
$50	3%	"	6/1/60	5/1/44	6/1/57	L.9H1615959
$50	3%	"	6/1/60	5/1/44	6/1/58	L.9H1006157
$50	3%	"	6/1/60	5/1/44	12/1/57	L.9H1006158
$50	3%	"	6/1/60	5/1/44	6/1/58	L.9H1615958
$50	3%	"	6/1/60	5/1/44	6/1/58	L.9H1196376
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H1059736
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H1059743
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H0303067
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H1059731
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H1059738
$50	3%	"	2/1/62	11/1/44	8/1/58	P.3H0419571
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648523
$50	3%	"	10/1/63	5/1/45	10/1/57	P.5H0292769
$50	3%	"	10/1/63	5/1/45	10/1/57	P.5H0425344
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648507
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648529
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648506
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648505
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648504
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648503
$50	3%	"	10/1/63	5/1/45	4/1/58	P.5H0648524
$50	3%	"	9/1/66	11/1/45	3/1/57	P.7H0284795
$50	3%	"	9/1/66	11/1/45	9/1/58	P.7H0284793
$50	3%	"	9/1/66	11/1/45	3/1/58	P.7H0741856
$50	3%	"	9/1/66	11/1/45	9/1/58	P.7H0284791
$50	3%	"	9/1/66	11/1/45	3/1/57	P.7H0284794
$50	3%	"	9/1/66	11/1/45	3/1/58	P.7H0700209
$50	3%	"	9/1/66	11/1/45	3/1/58	P.7H0700210
$1,000	3½%	City of Windsor General Debenture	12/31/67	9/18/45	12/31/58	No. 7089 Series HC
$1,000	3½%	"	12/31/67	9/18/45	12/31/58	No. 7093 Series HC



APPENDIX "D"

[TITLE OMITTED]

STATEMENT OF PORTION OF THE TRIAL NOT STENOGRAPHICALLY REPORTED

Pursuant to Rule 75(n), Federal Rules of Civil Procedure as made applicable by Rule 39(b)(1) of the Federal Rules of Criminal Procedure, the defendant-appellant submits the following statement of a coloquy among the Court, the Assistant United States Attorney prosecuting this case, and counsel for defendant, which was made outside the hearing of the jury and the court reporter during the course of the trial of this action and not stenographically reported; it took place while the Government was presenting its case in chief, promptly upon the reconvening of Court following the noon recess, to wit: (This statement is based upon the recollections and nearly contemporaneous notes of defense counsel.)

MR. BOOTH (Defense counsel Richard R. Booth, addressing U. S. District Judge Emett C. Choate):

> Your Honor, my client, his wife and I have just overheard a portion of a conversation which I believe should be brought to the attention of the Court. As the three of us were approaching this courtroom we observed several persons conversing amiably in the east hall on this floor near the Clerk's Office. Those participating in this conversation were Government witness Cox juror Vincent W. Africano, Jack Ancher and John Ashe, both of whom were peremptorily

excused from service on the jury in this case by myself. We overheard the Government witness, Mr. Cox, say to Mr. Africano, the juror: "Oh, is he on the jury? Well, I'll have to talk to him. He sold me a car not so long ago." I call to the Court's attention that William M. Sands, a member of the jury, is with a Miami automobile dealer, Luby Chevrolet, which leads me to conclude that the Government witness was talking about Mr. Sands. Since all the members of the jury said under oath that they did not know any of the Government witnesses when a list was read to them and since any contact between members of the jury and persons other than counsel is highly irregular and has been forbidden by this Court, the non-disclosure and the conversation in the hall may have well been prejudicial to my client, and I think an inquiry should be made to determine whether that is the case, because if Mr. Sands sold Mr. Cox a car, or if the conversation was prejudicial I will want to ask for a mistrial.

MR. BRIGGS (Assistant U. S. Attorney John L. Briggs prosecuting the case): I think the procedure to be used in situations like this is to proceed with the trial and then have an inquiry after the verdict has been returned.

JUDGE CHOATE (Presiding Judge Emett C. Choate): Yes, that is true; so let us proceed with the trial. If after the verdict is returned you feel that an inquiry should be made, recall

the incident to the Court and we shall look into the matter.

WALTERS, MOORE & COSTANZO
and RICHARD R. BOOTH,
Attorneys for Defendant-Appellant.

By RICHARD R. BOOTH

APPENDIX "E"

[TITLE OMITTED]

STATEMENT OF PROCEEDINGS NOT APPEARING IN THE RECORD

Pursuant to Rule 75(n), Federal Rules of Civil Procedure, as made applicable by Rule 39 (b)(1) of the Federal Rules of Criminal Procedure, the defendant-appellant submits the following statement of proceedings not appearing in the record. The proceedings referred to were had at or near 2:00 P.M. on April 4, 1960, in the Main Court Room of the Federal Building, 309 Northeast First Avenue, Miami, Florida; representing the defendant-appellant at said time was Richard R. Booth, his attorney, representing the Government at that time was John L. Briggs, Esq., Assistant United States Attorney, with the Honorable Emett C. Choate, United States District Judge, presiding. The nature of the proceeding was a discussion among the Court, the Assistant United States Attorney and the defendant's attorney to try and estimate when this cause was to come up for trial. Defendant's attorney

called to the attention of the Court the fact that a bill of particulars had not to t[illegible]me been supplied to the defendant or his attorney [illegible]ving a description of the bonds involved in the charges in this case as previously required by order of the Court. The Assistant United States Attorney then said that the bonds referred to in the indictment in this case were the same bonds listed on the bill of particulars furnished to the defendant in connection with indictment in case No. 11,064-M-Criminal, and that a bill of particulars in Case No. 11,520-M-Criminal would be served upon defendant prior to time of trial.

WALTERS, MOORE & COSTANZO
and RICHARD R. BOOTH,
Attorneys for Defendant-Appellant.

By RICHARD R. BOOTH
Of Counsel

CERTIFICATE OF SERVICE

I HEREBY certify that each of the following has been served with two copies of the foregoing petition for writ of certiorari in the manner indicated, to wit: The United States Attorney by personal service by the undersigned, and the Solicitor General, U. S. Department of Justice, Washington 25, D. C., by U. S. Air Mail, postage prepaid.

Richard R. Booth

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U. S.
FILED
NOV 1 1961
JOHN F. DAVIS, CLERK

No. 466

In the Supreme Court of the United States

OCTOBER TERM, 1961

EDWARD BROWDER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

HERBERT J. MILLER, JR.,
Assistant Attorney General,

BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys,

Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and rules involved	2
Statement	3
Argument	7
Conclusion	9

CITATIONS

Cases:

Chargois v. *United States*, 267 F. 2d 410	8
Dunbar v. *United States*, 156 U.S. 185	8
Hagner v. *United States*, 285 U.S. 427	8
Norris v. *United States*, 152 F. 2d 808, certiorari denied, 328 U.S. 850	8
United States v. *Debrow*, 346 U.S. 374	7
United States v. *Neff*, 212 F. 2d 297	8

Statute and rules:

18 U.S.C. 2315	2
Federal Rules of Civil Procedure:	
Rule 75(n)	3, 5, 9
Federal Rules of Criminal Procedure:	
Rule 7(c)	2
Rule 39(b)	3, 5

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 466

EDWARD BROWDER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-10) is reported at 292 F. 2d 44.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1961. A petition for rehearing was denied on August 1, 1961. On August 29, 1961, Mr. Justice Black extended the time for filing a petition

for certiorari to and including September 30, 1961. The petition for a writ of certiorari was filed on September 30, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the indictment, as supplemented by a bill of particulars, sufficiently advised petitioner of the offense with which he was charged.

2. Whether the indictment stated an offense.

3. Whether petitioner's conviction should be reversed because of alleged error in the court's handling of a suggestion that an impropriety had occurred outside the presence of the court.

STATUTE AND RULES INVOLVED

In pertinent part, 18 U.S.C. 2315 provides as follows:

> Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken; * * * * *
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

* * * *

Rule 7(c), F. R. Crim. P., provides in pertinent part:

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * * * *

Rule 39(b)(1), F. R. Crim. P., provides as follows:

> The rules and practice governing the preparation and form of the record on appeal in civil actions shall apply to the record on appeal in all criminal proceedings, except as otherwise provided in these rules.

Rule 75(n), F. R. Civ. P., provides as follows:

> In the event no stenographic report of the evidence or proceedings at a hearing or trial was made, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection, for use instead of a stenographer's transcript. This statement shall be served on the appellee who may serve objections or propose amendments thereto within 10 days after service upon him. Thereupon the statement, with the objections or proposed amendments, shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the court in the record on appeal.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of Florida, petitioner was convicted of knowingly receiving and concealing securities valued at more than $5,000, stolen from two Canadian banks (Pet. App. 11-12; R. 1-4, 33). He was sentenced to imprisonment for three years

on count 2 of the indictment, while sentence on count 4 was suspended and he was placed on probation for a period of three years, to begin upon his discharge from confinement on count 2 (R. 54).[1] The court of appeals affirmed (Pet. App. 1-10). Petitioner's contentions relate only to two matters—the sufficiency of the indictment, as supplemented by the bill of particulars, to advise him of the offense with which he was charged, and the manner in which the court handled a suggestion as to an alleged irregularity taking place out of the presence of the court. The record as to these two matters may be summarized as follows:

1. Count 2 of the indictment charged that on or about March 2, 1959, at Miami, Florida, petitioner knowingly received and concealed securities valued at more than $5,000, stolen from the Brockville Savings and Trust Company, of Brockville, Ontario, Canada. The securities were alleged to be certain described bonds of the Dominion of Canada, of the City of Windsor, Ontario, of the Province of Manitoba, "and other Canadian bonds, which constitute interstate commerce". Count 4 made a similar

---

[1] The indictment, consisting of six counts (R. 1-4), was consolidated for trial with another indictment charging petitioner and one Ferrara with conspiracy to do the substantive acts here charged (R. 7-8). At the trial, the court sustained a motion for a judgment of acquittal in the conspiracy case at the conclusion of the government's evidence (Pet. App. 4), and a similar motion as to counts 5 and 6 of this indictment at the conclusion of all the evidence (R. 31). The jury acquitted as to counts 1 and 3 and convicted on counts 2 and 4.

charge concerning securities stolen from the Caisse National D'Economie Insurance Company of Montreal. The securities were alleged to be bonds of the City of Longueuil, Quebec, of the City of Pont-Viau, Quebec, of the City of Ste. Rose, Quebec, "and other Canadian securities".

The bill of particulars filed by the government stated that the securities referred to in count 2 were bonds of the City of Windsor, totaling $7,000, bonds of the Province of Manitoba, totaling $2,000, bonds of the Dominion of Canada, totaling $78,000 (the three obligors named in count 2), and a bond of the St. Lawrence Corporation in the amount of $1,000. It listed under count 4 bonds of the City of Longueuil, totaling $2,000, bonds of the City of Pont-Viau, totaling $3,000, bonds of the City of Ste. Rose, totaling $1,000, and bonds of the City of Ste. Therese, totaling $4,000. As to each bond full details were given, *i.e.*, denomination, serial number, interest rate, maturity date, issue date, and the oldest coupon thereon (Pet. App. 13-19).

2. In purported compliance with Rule 75(n), F. R. Civ. P., made applicable by Rule 39(b)(1), F. R. Crim. P., *supra*, p. 3, petitioner filed a "Statement of Portion of the Trial not Stenographically Reported." This was done after petitioner's motion for new trial had been denied and notice of appeal had been filed (R. 58-60). The United States Attorney objected to this procedure, stating that his memory of the colloquy included in the "Statement" was different from that of petitioner's attorney, that the

procedure followed by counsel was not in accordance with the Rule, and that petitioner had disregarded the judge's suggestion that the matter be brought to his attention after the verdict was returned (R. 62-63).[2]

---

[2] The full text of the "Statement" reads as follows (Pet. App. 31-33):

MR. BOOTH (Defense Counsel Richard R. Booth, addressing U. S. District Judge Emett C. Choate):

> Your Honor, my client, his wife and I have just overheard a portion of a conversation which I believe should be brought to the attention of the Court. As the three of us were approaching this courtroom we observed several persons conversing amiably in the east hall on this floor near the Clerk's Office. Those participating in this conversation were Government witness Cox, juror Vincent W. Africano, Jack Ancher and John Ashe, both of whom were peremptorily excused from service on the jury in this case by myself. We overheard the Government witness, Mr. Cox, say to Mr. Africano, the juror: "Oh, is he on the jury? Well, I'll have to talk to him. He sold me a car not so long ago." I call to the Court's attention that William M. Sands, a member of the jury, is with a Miami automobile dealer, Luby Chevrolet, which leads me to conclude that the Government witness was talking about Mr. Sands. Since all the members of the jury said under oath that they did not know any of the Government witnesses when a list was read to them and since any contact between members of the jury and persons other than counsel is highly irregular and has been forbidden by this Court, the non-disclosure and the conversation in the hall may have well been prejudicial to my client, and I think an inquiry should be made to determine whether that is the case, because if Mr. Sands sold Mr. Cox a car, or if the conversation was prejudicial I will want to ask for a mistrial.

MR. BRIGGS (Assistant U. S. Attorney John L. Briggs prosecuting the case):

> I think the procedure to be used in situations like this

No attempt was made to have the court settle and approve the statement, as required by the Rule.

ARGUMENT

1. The bill of particulars filed in this case properly performed its function of making more specific the allegations of the indictment. It not only gave additional details as to the securities specified in the indictment, it informed petitioner that the "other Canadian bonds" referred to in count 2 were a bond of the St. Lawrence Corporation in the amount of $1,000, also specifically described. The information thus furnished was more than adequate to advise petitioner of the charges made against him and to protect him against subsequent prosecution for the same offenses. *United States* v. *Debrow*, 346 U.S. 374. Petitioner's professed fear that there may be still other Canadian bonds not listed in the bill of particulars which the United States Attorney is holding back for later

---

is to proceed with the trial and then have an inquiry after the verdict has been returned.

JUDGE CHOATE (Presiding Judge Emett C. Choate):

Yes, that is true; so let us proceed with the trial. If after the verdict is returned you feel that an inquiry should be made, recall the incident to the Court and we shall look into the matter.

WALTERS, MOORE & COSTANZO
and RICHARD R. BOOTH,
Attorneys for Defendant-Appellant.

By Richard R. Booth

prosecution is without any basis. The purpose of a bill of particulars is to limit the general allegations of an indictment so as to eliminate the possibility of subsequent prosecution, and it thus becomes conclusive as to the rights of the parties. *Norris* v. *United States*, 152 F. 2d 808, 811 (C.A. 5), certiorari denied, 328 U.S. 850; *United States* v. *Neff*, 212 F. 2d 297 (C.A. 3).

2. Petitioner criticizes as meaningless the phrase used in the indictment, "which constitute interstate commerce" (Pet. App. 11-12). It is perhaps true that too slavish an adherence to the language of the statute produced a maladroit form of expression and that it would have been better to say that the bonds had constituted securities in interstate or foreign commerce. However, this inartificiality in draftsmanship is of no significance after verdict. *Dunbar* v. *United States*, 156 U.S. 185, 192; *Hagner* v. *United States*, 285 U.S. 427, 433. The allegation that bonds stolen from two Canadian banks were received and concealed in Miami made it perfectly clear that the securities were necessarily in interstate or foreign commerce, or both, and the sufficiency of the evidence to prove such commerce is not challenged. No prejudice to petitioner could possibly have resulted from the awkward form of the pleading. *Chargois* v. *United States*, 267 F. 2d 410, 411 (C.A. 9).

3. The court of appeals properly disposed of the contention relating to an alleged irregularity taking place outside the presence of the court by pointing out that petitioner's "Statement of Portion of the Trial not Stenographically Reported", which was pur-

portedly filed pursuant to Rule 75(n), F. R. Civ. P., did not comply with the Rule. There was no attempt to have this *ex parte* statement approved by the court, which the Rule requires before it becomes a part of the record.

In addition, petitioner acquiesced in the court's suggestion that the matter be deferred until after verdict, when it could be called to the court's attention if counsel considered it to be of sufficient importance. Counsel apparently did not consider the matter to be of enough significance for further attention and the subject matter of the purported conversation would seem to justify that conclusion. See footnote 2, *supra*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

NOVEMBER 1961

☆ U. S. GOVERNMENT PRINTING OFFICE, 1961 817031 508